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File No. O Port Trust 149

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Legal DEPARTMENT

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NOT 416

Subject:— opinions under the Bombay Port Trusts Act, 1874

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C O N T E N T S

Legal Department File NO. O. Port Trusts/49

Sr. No.	Compilation No	Subject	Pages
1.	O.No. 12148 Dt. 21-2-49	The B'bay Port Trusts Act, 1874 whether, having regard to the provisions of the B'bay P.T. Act, the Trustees. Would be entitled to amend with retrospective effect a scale of rates previously framed by them.	1-3

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Office of the R.L.A.

The question referred to R.L. A. for opinion is whether, having regard to the provisions of the Bombay Port Trust Act, the Trustees would be entitled to amend with restropective effect a scale of rates previously framed by them.

2. The relevant provisions are contained in sections 43 and 43-B of the Bombay Port Trust Act, 1879. Section 43-B empowers the Board to framethe scale of tolls, dues, rents, rates and charges to be levied for each or any of the matters therein specified. Section 43-B(1) reads as follows:-

> " Every scale framed by the Board under either of the two last preceding sections shall be submitted to the Central Government for sanction; and when so sanctioned and published in the Bombay Government Gazette, shall have the force of law; and subject to like sanction and publication made from time to time be amended or added to by the Board".

3. It appears that the notification No. was issued in 1931 giving retrospective effect to the scale of rates. In 1934, the question was referred to the R.L.A. and answered in the negative- R.L.A's opinion No. 2340, dated 20th April 1934. That opinion was based upon the use of the word "when" occurring in section 43-B which was held to show that a scale can come into force only after the requirements mentioned in the section are fulfilled. The actual coming into force of the scale can, however, be distinguished from the contents of the scale; and it is possible to argue that express provision can be made in the scale itself that it shall operate retrospectively of the provi-sions of section 43-B the declaration that such scale shall operate retrospectively will not hav the force of law until it is published. However, there is a more fundamental objection to the makings of such retrospective forms in the scale...

*Copy appended.

The power of framing the scale is delegated to the Board under sec-tion 43, and the scale framed by the Board is thus of the nature of subordinate legislation. No doubt, the Provincial or Central Legislature of this country can by using express language impose rates, etc. retrospectively. Similarly, the Legislature by using appropriate express words can empower the delegate to impose such rates retrospectively But, in the absence of such express language the delegate authority cannot claim to frame subordinate legislation with retrospective effect. This follows from the general principle that unlike a Sovereign Legislatute exercising plenary powers a subordinate legislative authority must be circumscribed within the limits of its expressly delegated and that whatever is not, expressly delegated must be deemed to have been denied to it. It was accordingly held in the case of Stewart Vs. Brojendra Kishore Roy Choudhury by the Calcutta High Court (Mitra and Narsingrau. JJ.) that unless the parent Act itself clearly authorises the issue of a notification with retrospective effect it must be presumed that such a notification is forbideen. Narsingrau J. pointed out that it was seldom that retrospective notifications are contemplated, and on the rare occasions when they are contemplated it is usual to say so plainly; and he cited the precedents of section 1 of the Transfer of Property Act, 1882, and section 3 of the Succession Act, 1925. Such being the limits of subordinate legislation in general, they must be strictly adhered to, more especially where such legislation seeks to impose taxes or rates. For the reasons, it would not be legally feasible to amend the scale of rates with retrospective effect

4. It appears from Government Notification, Political Department, No. 6187 dated 16th April 1934, that Government has sanctioned amendments to the scale of rates framed by the Board with retrospective effect. But this sanction cannot be considered to have been validly given. As pointed out above, in the absence of any express provision to that effect, it will not be possible even for Government to give sanction to the scale of rates or amendments thereto with retrospective effect. What the Board is not competent to do directly cannot be achieved indirectly through the medium of Government's sanction

Sd/- P.M.Lad
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